**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**VICTORIA DIVISION**

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| ERASMO WOODS, | § | |
| *Plaintiff,* | § | |
| | § | |
| v. | § | |
| | § | CIVIL ACTION NO. 6:16-cv-00067 |
| DEVON ENERGY PRODUCTION | § | |
| COMPANY, L.P., | § | |
| *Defendant.* | § | |
| | § | |

**DEFENDANT DEVON ENERGY PRODUCTION COMPANY, L.P.'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF THIS COURT:

Notice is hereby given that pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, Defendant Devon Energy Production Company, L.P. ("Devon") hereby removes this action from the 24th Judicial District Court of DeWitt County, Texas, to the United States District Court for the Southern District of Texas, Victoria Division, and states the following as grounds for removal:

## I. STATE COURT ACTION

1. On September 12, 2016, Plaintiff Erasmo Woods ("Plaintiff") filed his Original Petition, Request for Disclosure, and Jury Demand (the "Complaint") in 24th Judicial District Court of DeWitt County, Texas, in an action styled *Erasmo Woods v. Devon Energy Corporation*, Cause No. 16-09-23,887 (the "State Court Action"). The Complaint named Devon Energy Corporation as the sole Defendant. Compl. at 1.

2. Devon Energy Corporation filed its Original Answer on October 14, 2016. On October 17, 2016, Plaintiff filed his First Amended Petition, Request for Disclosure, and Jury Demand (the "Amended Complaint"), nonsuiting Devon Energy Corporation as a party and

naming Devon Energy Production Company, L.P. as the sole defendant. *See* Am. Compl. at 1. Devon filed its Original Answer and Request for Disclosure on October 19, 2016.

3. In the State Court Action, Plaintiff claims he suffered personal injuries after slipping and falling at a well site situated in Cuero, DeWitt County, Texas. *See* Am. Compl. ¶¶ 8–12. Plaintiff claims that he was performing work at the well location as a crude hauler, and he was injured after slipping on white crude oil while walking down a set of stairs. *Id.* ¶ 9. Plaintiff contends that he suffered an upper ankle spiral fracture in his right leg as a result of the fall. *Id.*

4. Premised on these allegations, Plaintiff asserts two claims. First, Plaintiff asserts a cause of action for premises liability, claiming that Devon knew or should have known of the allegedly dangerous condition on the well site premises that was under its control, and that such condition caused Plaintiff to suffer serious injury. *Id.* ¶ 10. Second, Plaintiff asserts in the alternative a claim for negligence, alleging that Devon breached its duty to Plaintiff as an invitee on Devon's premises that resulted in injury to Plaintiff. *Id.* ¶ 12. Plaintiff seeks, *inter alia*, damages for lost wage earning capacity, medical expenses, pain and suffering, mental anguish, and physical impairment. *Id.* ¶¶ 13–15. Plaintiff also seeks to recover exemplary damages. *Id.* ¶ 16. Plaintiff affirmatively alleges that he has suffered damages in an amount over $200,000 but less than $1,000,000. *Id.* ¶ 7.

5. Devon removes the State Court Action to this Court on the basis of diversity jurisdiction as more fully described below. *See* 28 U.S.C. § 1332.

## II. PROCEDURAL REQUIREMENTS

6. This action is properly removed to this Court, as the State Court Action is pending within this district and division. 28 U.S.C. §§ 124(b)(5), 1441, 1446(a).

7. The Amended Complaint was filed on October 17, 2016, and Devon voluntarily entered an appearance on October 19, 2016, dispensing with the need for formal service of process. Accordingly, because this Notice of Removal is being filed within 30 days of Devon's voluntary appearance in this lawsuit, removal is timely under 28 U.S.C. § 1446(b). *See Am.'s Best Value Inn & Suites v. Allied Prop. & Cas. Ins. Co.*, A-14-CV-00090-LY, 2014 WL 1345494, at *2 (W.D. Tex. Apr. 3, 2014) (holding the 30-day removal deadline began to run on the date the defendant voluntarily appeared through its answer, which dispensed with the need for formal service of process).

8. The United States District Court for the Southern District of Texas, Victoria Division has original jurisdiction over this action based on diversity jurisdiction because Devon is now, and was at the time this action commenced, diverse in citizenship from Plaintiff, and the amount in controversy exceeds the minimum jurisdictional amount. *See* 28 U.S.C. §§ 1331 and 1332(a).

9. Pursuant to 28 U.S.C. § 1446(a) and Southern District of Texas Local Rule 81, Devon attaches the following materials to this Notice of Removal:

**Exhibit A**: Index of Matters Being Filed

**Exhibit B:** Docket Sheet and Entire File of Record in State Court Action

**Exhibit C:** Notice of Removal filed in the State Court Action[1]

**Exhibit D:** List of Attorneys

**Exhibit E:** Civil Cover Sheet (JS44c)

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[1] Devon has not included Exhibit 1 to the state court removal notice in Exhibit C because Exhibit 1 is a copy of the notice of removal filed in this Court.

10. Simultaneously with the filing of this Notice of Removal, Devon is filing a copy of the Notice of Removal in the 24th Judicial District Court of DeWitt County, Texas pursuant to 28 U.S.C. § 1446(d). *See* **Ex. C**.

## III. DIVERSITY OF CITIZENSHIP

11. Where there is complete diversity among parties and the amount in controversy exceeds $75,000, an action may be removed to federal court. 28 U.S.C. §§ 1332(a), 1441(a). Complete diversity exists in this case because Plaintiff is not a citizen of the same state as Defendant.

### A. DIVERSITY OF CITIZENSHIP

12. Plaintiff Erasmo Woods is a citizen of Texas. Am. Compl. ¶ 3. For purposes of diversity jurisdiction, "[a] natural person is considered a citizen of the state where that person is domiciled, that is, where the person has a fixed residence with the intent to remain there indefinitely." *Margetis v. Ray*, No. 3:08-CV-958-L, 2009 WL 464962, *3 (N.D. Tex. Feb. 25, 2009) (citing *Freeman v. Nw. Acceptance Corp.*, 754 F.2d 553, 555-56 (5th Cir. 1985)). Plaintiff alleges that "he resides in Nueces County, Texas, and has resided there at all times material to this lawsuit." Am. Compl. ¶ 3. Thus, Plaintiff is a citizen of Texas.

13. Plaintiff incorrectly alleges that Devon is an Oklahoma corporation. *See* Am. Compl. ¶ 4. Devon is an Oklahoma limited partnership with its principal office located in Oklahoma City, Oklahoma. The citizenship of a limited partnership is determined by the citizenship of each of its partners. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079–80 (5th Cir. 2008) (recognizing that the citizenship of limited partnerships as well as limited liability companies is determined by the citizenship of each of its partners or members). Devon has one general partner and one limited partner. The general partner is DVN Operating Company,

L.L.C. The limited partner is Devon OEI Operating, L.L.C. Devon OEI Operating, L.L.C. is the sole member of the general partner, DVN Operating Company, L.L.C. Devon OEI Operating, L.L.C. is wholly owned by Devon OEI Holdings, L.L.C.

14. Devon Energy Corporation (Oklahoma), an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma, is the sole member of Devon OEI Holdings, L.L.C. A corporation is a citizen of the state where it is incorporated and the state where it has its principal place of business. *See* 28 U.S.C. § 1332(c)(1); *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 88–89 (2005).

15. Thus, based on the citizenship of the member owner(s) of its general and limited partner, Devon is a citizen of Oklahoma for purposes of diversity jurisdiction. *See Harvey*, 542 F.3d at 1079–80.

16. Because Plaintiff is citizen of Texas and Devon is a citizen of Oklahoma, complete diversity exists in this matter.[2] 28 U.S.C. § 1332(a); *see Wis. Dep't of Corrections v. Schacht*, 524 U.S. 381, 388 (1998).

## B. AMOUNT IN CONTROVERSY

17. Where a defendant can show, by a preponderance of the evidence, that the amount in controversy is greater than the jurisdictional amount, removal is proper. *See White v. FCI U.S.A., Inc.*, 319 F.3d 672, 675 (5th Cir. 2003); *see also St. Paul Reins. Co. v. Greenberg*, 134 F.3d 1250, 1253 n.13 (5th Cir. 1998) ("[t]he test is whether it is more likely than not that the

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[2] Plaintiff initially sued Devon Energy Corporation, but subsequently amended his complaint, omitting Devon Energy Corporation as a defendant, and naming Devon Energy Production Company, L.P. as the sole defendant. *Compare* Compl. at 1, *with* Am. Compl. at 1. In Texas, an amended pleading supersedes and supplants all previous pleadings and operates to nonsuit parties and/or claims. *See, e.g., FKM P'ship, Ltd. v. Bd. of Regents of Univ. of Houston Sys.*, 255 S.W.3d 619, 632 (Tex. 2008); *Randolph v. Jackson Walker L.L.P.*, 29 S.W.3d 271, 274 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) ("When a party's name is omitted from an amended pleading, he is as effectively dismissed as where a formal order of dismissal is entered."); *see also* Tex. R. Civ. P. 65 (substituted instrument is no longer regarded as part of the pleadings). The Amended Complaint thus clarifies that Devon Energy Corporation is no longer a party to this proceeding.

amount of the claim will exceed [the jurisdictional minimum]"). The defendant can meet its burden if it is apparent from the face of the complaint that the claims are likely to exceed $75,000, or, alternatively, if the defendant introduces other evidence to show that the amount in controversy more likely than not exceeds $75,000. *Greenberg*, 134 F.3d at 1253. "The amount in controversy is determined from the perspective of the plaintiff, and the proper measure is the benefit to the plaintiff, not the cost to the defendant." *Berry v. Chase Home Fin., LLC*, 2009 WL 2868224, at *2 (S.D. Tex. Aug. 27, 2009). To determine the amount in controversy, a court may consider actual damages, exemplary damages, and attorney fees. *White*, 319 F.3d at 675–76.

18. Plaintiff seeks damages for, *inter alia*, medical expenses, lost wage earning capacity, pain and suffering, mental anguish, and physical impairment, and Plaintiff also seeks exemplary damages—all of which the Court may properly consider as part of its amount in controversy calculation. *Id.* ¶¶ 13–16; *see White*, 319 F.3d at 675–76 (upholding district court's conclusion that compensatory damages, punitive damages, and attorney's fees would "more probably than not" exceed $75,000). While Plaintiff does not allege a specific amount in controversy in the Amended Complaint, the total damages and other relief that Plaintiff seeks more likely than not exceeds $75,000.

19. Plaintiff affirmatively pleads that "the value of this case is over two hundred thousand dollars ($200,000)." Am. Compl. ¶ 3. Thus, on its face, the amount in controversy element is satisfied. *Middlebrook v. SLM Fin. Corp.*, No. 5:15-CV-237-DAE, 2015 WL 2401435, at *3 (W.D. Tex. May 20, 2015) (denying motion for remand where Plaintiff's complaint states she asserts damages in some amount between $100,000 and $200,000, which clearly exceeds $75,000"); *Arriaga v. Midland Funding, LLC*, No. 3:14–CV–4044–M, 2015 WL 567264, at *3 (N.D. Tex. Feb. 11, 2015) (finding that defendants showed that it was facially

apparent from the complaint that the plaintiff sought damages in excess of $75,000 where the plaintiff alleged damages over $100,000 but less than $200,000); *TFHSP LLC Series 605 v. Lakeview Loan Servicing, LLC*, No. 3:14–CV–1782–B, 2014 WL 5786949, at *4 (N.D. Tex. Nov. 3, 2014) ("Had Plaintiff clearly selected a form of relief enumerated in Texas Rule of Civil Procedure 47(c) that exceeds $75,000 it would have been facially apparent that the damages requested satisfy the jurisdictional requirement.")

20. Plaintiff's requested relief demonstrates that the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

8. Because there is complete diversity among the parties and the amount in controversy requirement is satisfied, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, and removal pursuant to 28 U.S.C. § 1441 is proper.

## IV. PRAYER

WHEREFORE, Defendant Devon Energy Production Company, L.P. hereby removes this action from the 24th Judicial District Court of DeWitt County, Texas, to the United States District Court for the Southern District of Texas, Victoria Division, so that this Court may assume jurisdiction over the cause as provided by law.

Respectfully submitted,

By *__/s/ D. Davin McGinnis__________________*

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**ATTORNEYS FOR DEFENDANT DEVON ENERGY PRODUCTION COMPANY, L.P.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record, as listed below, by certified mail, return receipt requested on October 24, 2016:

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